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8 Attorneys for Plaintiffs,
9 UMG RECORDINGS, INC.; CAPITOL
10 RECORDS, INC.; FONOVisA, INC.; and
11 INTERSCOPE RECORDS
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 UMG RECORDINGS, INC., a Delaware
18 corporation; CAPITOL RECORDS, INC., a
19 Delaware corporation; FONOVisA, INC., a
20 California corporation; and INTERSCOPE
21 RECORDS, a California general partnership,

22 Plaintiffs,

23 v.

24 JOHN DOE,

25 Defendant.
26
27
28

CASE NO. 4:08-CV-01038-SBA

Honorable Sandra Brown Armstrong

**SUPPLEMENTAL DECLARATION OF
DAWNIELL ALISE ZAVALA IN
FURTHER SUPPORT OF *EX PARTE*
APPLICATION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY [Docket No. 3]
AND IN RESPONSE TO ORDER FILED
JULY 1, 2008 [Docket No. 16]**

DECLARATION OF DAWNIELL ALISE ZAVALA

I, Dawniell Alise Zavala, declare:

1. I am an associate in the law firm of Holme Roberts & Owen LLP ("HRO"). HRO serves as lead national counsel for Plaintiffs in this and all similar actions. I have personal knowledge of all facts set forth in this declaration, except as where stated on information and belief. As to such facts, I believe them to be true.

2. On information and belief, an individual identifying himself as a law clerk for the Honorable Sandra Brown Armstrong left voicemail messages on May 18, and May 22, 2008 for Matthew Franklin Jaksa, an attorney at HRO. The law clerk requested that Plaintiffs submit certain supplemental materials in order to enable the Court to rule on Plaintiffs' *Ex Parte* Application For Leave to Take Immediate Discovery, filed on February 21, 2008 and entered as Docket No. 3. Plaintiffs were requested to: (1) submit to the Court the list of files Defendant has made available for distribution to the public, as referenced in Paragraph 19 of the Declaration of Carlos Linares, filed on February 21, 2008 and entered as Docket No. 7; (2) explain why Plaintiffs are unable to notice a hearing on their *Ex Parte* Application For Leave to Take Immediate Discovery, as by uploading a file to Defendant John Doe's computer through the "peer-to-peer" ("P2P") file sharing network that Plaintiffs allege was used to infringe Plaintiffs' copyrights; and (3) submit a proposed order in the format described in Judge Armstrong's Standing Order for Civil Cases and incorporating a discussion of the notice issue.

3. On May 21, 2008, in response to this request, Plaintiffs filed two supplemental declarations, one of Matthew Franklin Jaksa and one of Katheryn J. Coggon, both attorneys at HRO. Plaintiffs also submitted a copy of the list of files Defendant made available to the public, and a reformatted proposed order as directed by Judge Armstrong's law clerk was filed on May 29, 2008.

4. On July 1, 2008, the Court issued an order directing Plaintiffs to determine the following: (1) whether the information sought by subpoena in this matter is still available from the Internet Service Provider ("ISP") (here, UC Santa Cruz); and (2) whether the ISP would provide this information to Plaintiffs without a subpoena.

1 5. On July 7, 2008, I personally contacted UC Santa Cruz via email to determine
2 whether it still had information available for the individual associated with the IP address
3 169.229.80.141 2007-06-09 06:11:44 EDT, and if so, whether UC Santa Cruz would provide this
4 information to Plaintiffs without a subpoena.

5 6. On July 10, 2008, Carole R. Rossi, Chief Campus Counsel at UC Santa Cruz,
6 responded to my inquiries via email, stating (1) to the best of her knowledge, UC Santa Cruz still has
7 information associated with the infringing IP address at issue, and (2) UC Santa Cruz will not
8 provide this information without a subpoena. Attached as **Exhibit A** is a true and correct copy of the
9 email sent to me by Ms. Rossi.

10 7. As a result of this communication from Ms. Rossi, Plaintiffs will not be able to
11 discover the identity of the individual associated with the infringing IP address 169.229.80.141
12 2007-06-09 06:11:44 EDT unless and until the Court grants Plaintiffs' *Ex Parte* Application For
13 Leave to Take Immediate Discovery and authorizes Plaintiffs to serve a Rule 45 subpoena on
14 Defendant's ISP.

15 8. Once the subpoena is served upon the ISP, Defendant will have an opportunity to
16 object before his or her information is released pursuant to the subpoena. Plaintiffs will serve a
17 cover letter along with their subpoena that asks the ISP to notify the user of the pending subpoena so
18 that the user can move to quash the subpoena or contact Plaintiffs directly to attempt to resolve the
19 matter prior to the return date on the subpoena. In addition, a properly framed court order, such as
20 the proposed order filed on May 29, 2008, would ensure that Defendant has the opportunity to object
21 before the return date on the subpoena.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed this 21st day of July, 2008, at San Francisco, California.

25
26 
27 Dawniell Alise Zavala
28

EXHIBIT A

Dawniell Zavala

Subject: FW: UCSC Doe # 3 Filed 2/21/2008 - Order from Judge Armstrong

From: Carole Rossi [mailto:crossi@ucsc.edu]
Sent: Thursday, July 10, 2008 6:11 PM
To: Dawniell Zavala; ddolezal@ucsc.edu
Subject: RE: UCSC Doe # 3 Filed 2/21/2008 - Order from Judge Armstrong

July 10, 2008

Dawniell Zavala
Litigation Associate
Holme Roberts & Owen LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994

Re: Case No. C-08-1038 -- Order from Judge Armstrong

Dear Ms. Zavala:

I write in response to your below email of July 7, 2008 regarding Judge Armstrong's Order to Holme Roberts & Owen related to identifying information for IP address 169.233.18.36 2007-05-30 14:56:46 EDT.

Regarding question number one (1), to the best of my knowledge the University of California Santa Cruz still has information which may be responsive to the request. With regard to question number two (2), the University is unable to produce any identifying information without a subpoena.

If you have any further questions, please feel free to contact me via email at crossi@ucsc.edu or telephone (831) 459-3126.

Sincerely,

Carole R. Rossi
Chief Campus Counsel

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7/17/2008